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ORIGINAL

BY FAX AND HAND

March 2, 2006

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings  
MAR 2 - 2006  
Part of  
Public Record

RE: STB Finance Docket No. 34813, New York New Jersey  
Rail LLC and New York Cross Harbor Railroad Terminal  
Corp -- Transaction within a corporate family  
exemption

**Motion to hold in abeyance**

Dear Mr. Williams:

I am writing on behalf of Petitioners New York New  
Jersey Rail LLC and New York Cross Harbor Railroad Terminal  
Corp. ("NYNJRR", "NYCH," and collectively "Petitioners") to  
reply to the letter submitted today by the New York City  
Economic Development Corporation ("NYCEDC") in the above-  
captioned exemption proceeding.

The gist of NYCEDC's letter is that the Board should  
continue to hold this proceeding in abeyance for an  
indefinite amount of time while Petitioners attempt to  
obtain NYCEDC's consent to a transfer of NYCH's operations  
to NYNJRR. The Board should reject NYCEDC's position as  
unreasonable because it ignores the realities of the  
administrative process of New York City agencies for  
approving contracts with the City (a process known as  
"Vendex").

Current management has been in control of NYCH for  
just short of one year. The City has not experienced any

Vernon A. Williams  
March 2, 2006  
Page two

adverse consequences resulting from current management's ownership and operation of NYCH. The authority sought here will have no adverse impact on the City.

During the past year NYCH's current management contacted City officials including NYCEDC officials numerous times, by letter, by email, by phone, and by intermediaries, in an attempt to schedule a meeting for the purpose of giving City officials a level of comfort. Several email messages identifying some recent NYCH contacts are attached to this letter. Frequently, phone calls and other inquiries went unanswered. On other occasions, NYCEDC representatives promised to get back with meeting dates and/or times and never did. On a recent conference call initiated by Petitioners with NYCEDC's counsel, NYCEDC's counsel suggested that Petitioners call Alice Cheng. NYCH's Donald Cornell called her several times and received no response. NYCEDC's counsel also suggested that NYCH write NYCEDC seeking its formal consent to the transfer of NYCH's rights. NYCH's James Cornell did just that and a copy of his letter to NYCEDC's Alice Cheng is attached hereto. Ms. Cheng responded in a letter dated February 27, 2006, copy attached, offering to meet with NYCH and even stating that her assistant would propose some meeting dates (NYCH has yet to hear back). But Ms. Cheng's letter makes clear that any meeting must wait until NYCH has completed and submitted and the City has approved its Vendex application.

Ms. Cheng's response belies the fact that the Vendex process is open-ended and very time consuming. While the undersigned counsel understands that Vendex approval may take as little as 6 to 8 weeks, there is no upper limit on the amount of time the City can take. Prior NYCH management had submitted a Vendex application for use of the NYCEDC-owned 65<sup>th</sup> Street rail yard about two years ago and, to the best of counsel's knowledge, that application has yet to be approved. Petitioners are presently gathering the information required for the Vendex application and expect to submit it promptly. However, any decision by the Board to postpone its ruling on the transfer until NYCEDC completes the Vendex process and approves this transfer could jeopardize NYCH's finances and

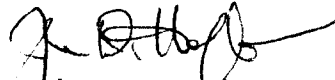
Vernon A. Williams  
March 2, 2006  
Page three

rehabilitation plans and threatened service to its rail customers.

In an effort to resolve this dispute and preserve rail service, Petitioners respectfully request that the Board promptly issue a decision allowing Petitioners to consummate this transaction. Petitioners would be willing to submit to mediation of this dispute, particularly a mediation where the STB was the mediator or selected the mediator.

Please date stamp and return one copy of this letter.

Sincerely yours,



John D. Heffner

Cc: David Konschnik, Esq.  
Charles Spitulnik, Esq.  
Jonathan Broder, Esq.

**NEW YORK CROSS HARBOR RAILROAD TERMINAL CORPORATION**

5266 Seneca Street  
West Seneca, New York 14224  
T(716)675-6001 x223      F(716)675-5434

February 23, 2005

Ms. Alice Cheng  
Cross Harbor Freight Movement  
New York City  
Economic Development Corporation  
110 William Street  
New York, NY 10038

**Re: Request for consent to assignment of license for utilization of Bush Terminal Yard and Floatbridge Facility and tracks at the Harborside Industrial Center by New York Cross Harbor Railroad Terminal Corporation**

Dear Ms. Chang:

Pursuant to the assignment provisions of the 1984 permit issued by the City of New York for the above-described railroad facilities, I am writing you on behalf of the New York Cross Harbor Terminal Railroad Corporation ("NYCH") and New York New Jersey Rail, LLC (hereafter "NYNJRR") to seek New York City Economic Development Corporation's ("NYCEDC's") consent to the transfer to NYNJRR of NYCH's rights to utilize the Bush Terminal Yard and the related Floatbridge and tracks at the Harborside Industrial Center for railroad operations.

NYCH is a short line railroad that operates in and along the Brooklyn waterfront serving 8 local customers. NYCH also provides rail customers on Long Island with a strategic connecting link to major rail connections in New Jersey. Utilizing a fleet of barges, NYCH floats rail traffic between Brooklyn and Long Island to competitive rail connections with both Norfolk Southern Railroad and CSX Transportation for movement to or from points elsewhere in the United States.

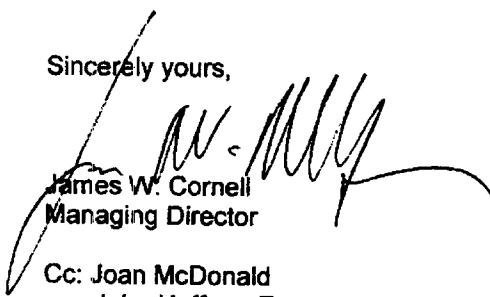
As you may recall, NYCH was formerly owned by New York Regional Rail Corp. ("NYRR"), which had been owned and managed by persons with credentials and relationships that were unacceptable to the NYCEDC. About a year ago, new investors acquired a majority ownership in NYRR, terminated prior management, and provided the railroad with substantial capital to address a backlog of deferred maintenance and unpaid obligations. As the new management attempted to resolve a couple of decades of financial, operating, and political problems, it became apparent that it would be necessary to spin off NYCH's operations and assets to a new entity that would not be burdened by NYRR's and NYCH's prior bad reputation. That spin off of the capital stock of NYCH to private ownership was consummated in November 2005. NYCH's new management then directed its regulatory counsel to submit a filing to the federal Surface Transportation Board ("STB") to allow a new operating entity, New York New Jersey Rail LLC to acquire NYCH's assets and operations. New management believes that this new structure will enable it to attract the investment funds needed to put the Cross Harbor Railfloat operation in a good state of repair to provide customers with viable rail service.

Shortly after NYCH and NYNJR filed its request with the STB, NYCEDC asked that agency to hold this matter in abeyance so it could assure itself that this transaction would not, in its words, "modify, alter, or otherwise compromise the City's rights pursuant to a permit dated as of September 1, 1984," that relates to the rail facilities NYCH leases from the NYCEDC. NYCEDC correctly noted that Consolidated Rail Corporation ("Conrail") had also filed a request with the STB to stay this matter until it could satisfy itself as to certain issues. Upon receipt of Conrail's concerns, NYCH and NYNJR asked the STB to hold in abeyance its request so that it could meet with Conrail to resolve matters of mutual concern. Unlike with NYCEDC, NYCH was able to meet promptly with Conrail and begin a discussion leading to a resolution of such concerns. By contrast, NYCH and NYNJR have not enjoyed the same success in obtaining a meeting with NYCEDC officials so that matters of mutual concern can be resolved.

Accordingly, NYCH and NYNJR request a) that NYCEDC promptly grant its consent to the transfer of the license for use of the Bush Terminal and related rail infrastructure to NYNJR, and b) agree to schedule a meeting with NYCEDC officials to enable us identify and work to resolve any issues that stand as an impediment to our each enjoying a productive relationship with one another.

The operational requirements and financial resources necessary to continue the Cross Harbor Railfloat service are urgent. In the absence of our ability to consummate the transaction described, service to Brooklyn customers may be adversely affected and this vital link from New Jersey to Brooklyn and beyond may be disrupted. We have directed our legal counsel to proceed immediately with seeking regulatory approval for the transaction at the STB, and ask NYCEDC to act promptly to meet with us to resolve the commercial matters existing between the railroad and the NYCEDC. Please contact the undersigned at the number above at your earliest convenience to discuss this important matter and coordinate a date to meet.

Sincerely yours,



James W. Cornell  
Managing Director

Cc: Joan McDonald  
John Heffner, Esq.



New York City  
Economic Development  
Corporation

110 William Street  
New York, NY 10038  
Tel: 212.619.5000  
Info@nycedc.com  
www.nycedc.com

February 27, 2006

Mr. James Cornell  
Managing Director  
New York Cross Harbor Railroad Terminal Corporation  
5256 Seneca Street  
West Seneca, NY 14424

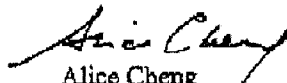
Dear Mr. Cornell:

I am responding to your letter of February 23, 2006. I am pleased to receive an acknowledgement from New York Cross Harbor Railroad ("NYCH") of its obligations under the 1984 permit from the City under which NYCH occupies the facilities at the Bush Terminal Yard and the related Floatbridge and tracks at the Harborside Industrial Center. Your letter is the first response we have received to the letter our counsel sent to yours in December after our counsel discovered, by reviewing the Surface Transportation Board website, that your company and New York New Jersey Rail LLC ("NYNJ") had submitted a Notice of Exemption on December 22, 2005.

We will be pleased to meet with you or representatives of your company to discuss the transfer to NYNJ of NYCH's rights and obligations under the 1984 permit. I will ask my assistant to contact you to arrange a meeting. When you are proposing dates for such a meeting, please be sure to allow for sufficient time for NYNJ to complete the forms required by the City's Vendex or background check process and City review so that we can be certain when we meet that NYNJ is eligible to enter into contracts with the City. Our counsel tells me that he has already discussed with you and your counsel the need to complete Vendex review before EDC or the City can consent to the assignment of any rights or obligations under the Permit to NYNJ. If you do not have them already, you can download the Vendex forms by visiting EDC's website at <http://www.newyorkbiz.com/Vendex.html>.

As this is the first response we have had to our December 2005 letter to your counsel and because we are not yet in a position to confirm that the requirements of the Permit and of the City's Vendex process have been satisfied, I will instruct EDC's counsel to ask the STB to delay its action on the transaction that NYCH and NYNJ have proposed until such time as we can confirm that the City's rights will be preserved and protected. I look forward to meeting with you.

Yours very truly,

  
Alice Cheng  
Vice President

Don called Joan MacDonald approx 14-15 January - she didnt return his call. He followed up an additional 3 times through January and into beginning of February and received a return call after the 3rd followup call. She called Don back and left a mesage on dons cel to return her call. This is the call msg that Don played for you when we met in Buffalo. Don then placed a call to her the day you were in Buffalo and an additonal 2 times, and also left messages for Andrew Gant and Alice Cheng. Joan returned the call Tuesday of week following your vists and promised to get back to him with dates to meet. The call never came with the dates. The last call was followed up with an email immediately after the call, another a week to 10 days ago again requesting dates. No response was ever recieved to either email. The emails can be located, the phone calls would have to be retrieved from dons cel fone log.

James W. Cornell  
MBA, CMC, CBC, CM&AA, CTP, CBA, CRA, CVC, CPP  
President

Praxiis Business Advisors  
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716-675-5434 fx

*"Helping private and corporate business owners create strategies for high performance & competitive dominance, drive value growth, and when ready devise and execute the most profitable exit through a predetermined succession plan or sale of the business."*

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**john heffner**

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**From:** <Huttondbs@aol.com>  
**To:** <jmcdonald@nycedc.com>  
**Sent:** Monday, February 13, 2006 2:48 PM  
**Subject:** Discussion Meeting

Ms. Joan McDonald  
New York City Economic Development Corporation

Thank you for returning my call. As we discussed, we would like to set a meeting, at the earliest possible date, to discuss any outstanding issues related to the Cross Harbor Rail operation and New York City Economic Development Corporation.

We have been working diligently to turn the operation around, and to reposition it as a credible company and freight transportation provider to NYC. This has included establishing New York New Jersey Rail, LLC. as a new operating entity to take over the operating rights from Cross Harbor so new investment can be attracted and made for much needed capital improvements. We are prepared to discuss this with you in detail at our meeting.

Time is of the Essence for us to meet, resolve old issues and establish a productive working relationship for the future. Your cooperation facilitating our meeting will be very appreciated.

*Donald B Hutton*  
Director - Government Relations  
716-553-5674  
716-675-6015

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3/2/2006



**john heffner**

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**From:** <Huttondbbs@aol.com>  
**To:** <jmcdonald@nycedc.com>  
**Sent:** Friday, February 17, 2006 1:52 PM  
**Subject:** Meeting dates

Ms. Joan McDonald

When we spoke last you agreed we should have a meeting and stated you were going to comeback to me with some tentative dates. How you been able to secure some time in the schedule?

*Donald B Hutton*

Director - Government Relations

716-553-5674

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**john heffner**

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**From:** <Huttondbbs@aol.com>  
**To:** <jmcdonald@nycedc.com>  
**Sent:** Tuesday, February 21, 2006 12:37 PM  
**Subject:** Please respond to the message

Ms. Joan McDonald

I just left a message for you at your office to call me. It is important that we hear from you today - so that we can determine and resolve the differences between the City and Railroad.

*Donald B Hutton*

Director - Government Relations

716-553-5674  
716-675-6015

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